IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1109 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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YUNUS VALIMOHMAD VEVARIA - Appellant(s)
Versus
YUNUSBHAI ALIMOHMAD VIJLIVADA & 8 - Defendant(s)

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Appearance :
MR ND NANAVATI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 5, 9,
MR SUNIL B PARIKH for Defendant(s) : 6,
NOTICE NOT RECD BACK for Defendant(s) : 7 - 8.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 04/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 28.02.85 passed by the Motor Accident Claims Tribunal(Main) Rajkot in MACP No. 303 of 1981 whereby the Tribunal awarded compensation to the tune of Rs. 68500/- alongwith interest at the rate of 6% per annum payable by the original opponent no.1.

2. The original claimants had filed claim petition seeking compensation to the tune of Rs. 100000/- for the accidental death of the deceased which occurred on

15.04.81 while the deceased was riding his bicycle. At that time, a station wagon being reversed by original opponent no.1 hit the deceased causing his death. The original applicants being the legal heirs and representatives of the deceased filed the claim petition under the said circumstances. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal has erred in holding that the accident resulted on account of rash and negligent driving of the vehicle by original opponent no.1-present appellant.

4. Mr Sunil Parikh, learned counsel appearing for the insurance company has submitted that the appellant did not have a valid driving license with him while he was driving the said vehicle and therefore the insurance company cannot be made liable to satisfy the claim of the original claimants.

5. Heard learned counsel for the parties. As a result of hearing and perusal of records, I am of the opinion that the issue is squarely covered by the decision of the Apex Court in the case of **National Insurance Co. Ltd. V Kusum Rai and Others reported in 2006(4) SCC 250** wherein

it is held that in a case where a commercial vehicle driven by a person not possessing appropriate license, meeting with an accident, the insurer could rightly set up the defence of breach of condition of the insurance contract. In that view of the matter, since the appellant in the present case did not possess a valid driving license at the time of the accident and thereby killing a person, no relief can be granted to him. The insurance company is therefore not liable to satisfy any claim arising out of breach of insurance contract.

6. In the premises aforesaid, appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

Divya//